



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,983	01/08/2002	Mary A. Lamp	72847	7682

22242 7590 04/10/2003

FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	8

DATE MAILED: 04/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. 10/042,983	Applicant(s) Haegens et al.
Examiner Lien Tran	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Jan. 21, 2003

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-15 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-15 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	6) <input type="checkbox"/> Other: _____

Art Unit: 1761

1. The 112 first paragraph rejection of claims 9-15 is hereby withdrawn.
2. The 103 rejection of claims 1-15 over the Feldmeier et al, Loose, Goglanian, Cochran et al, The Encyclopedia of Chemical Technology, The Baking Science & Technology and Atwell is hereby withdrawn.
3. Claims 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haegens et al in view Atwell, Loose, The Encyclopedia of Chemical Technology and The Baking Science & Technology.

Haegens et al disclose a bread stick baked from a dough comprising flour, vegetable oil, lard, salt, whey-like suspension and water. The breadstick is packaged. (See columns 2-3).

Haegens et al do not disclose the water activity, the stick with perforation so that it can be broken into at least two individual pieces, the dough recipe does not contain ingredients such as sweetener, dough relaxer, sodium stearoyl lactylate, monoglyceride and diglyceride, enzyme, spice and seasoning, gum and calcium propionate and the amounts of ingredients as claimed.

Loose discloses a biscuit product with perforation so that it can be broken into different portions (see col. 1).

Cochran et al disclose on column 3 lines 35-40 that common baked goods such as bread, dinner rolls typically have a water activity in the range of about .9-.98.

Atwell discloses a refrigerated dough in which a dough relaxer may be added to facilitate sheeting of the dough, emulsifier is added to influence texture and homogeneity of the dough mixture to increase dough stability, to improve eating quality and to prolong palatability. Useful

Art Unit: 1761

emulsifying agents include mono and di glyceride. Atwell also teaches shortening may be added as a tenderizer, seasoning, extenders, preservatives and food colorings may be added as desired. (see columns 4-5)

The book " Encyclopedia of Chemical Technology" teaches mold inhibitors such as calcium propionate is commonly added to bakery foods to extend shelf life and enzymes are added to reduce mixing time of dough or to make doughs more pliable

The book " Baking Science & Technology" teaches to use dough conditioners such as sodium stearoyl lactylate in bread making . The condition acts to produce measurable increase in dough absorption, an improved mixing tolerance and machinability of the dough, an accelerated final proof, an increase in loaf volume, improvements in grain and texture, greater crust tenderness and extended keeping properties.

All the ingredients claimed and not disclosed by Haegens et al are well known in the art as shown by the prior art. These ingredients are added to dough to obtain specific functions and properties. It would also have been obvious to one skilled in the art at the time of the invention to add a dough relaxer, sodium stearoyl lactylate, emulsifiers, enzyme and calcium propionate to the dough disclose by Haegens et al for their art-recognized functions as taught by the prior art. It would have been obvious to add sugar when desiring a sweet taste. It would also have been obvious to add a gum as stabilizer; this is well known in the art. It would also have been obvious to add seasoning and/or spices to the bread to enhance the flavor and taste of the product. The type of seasoning or spice depends on the flavor and taste wanted and this can vary among

Art Unit: 1761

individuals. As to the amounts, the amounts to be used depends on the size of the product, the type of bread and the flavor, taste and texture wanted in such bread. It would have been within the skill of one in the art to determine the amounts ,taking into consideration the above factors, through routine experimentation. While Haegens et al are silent on the water activity, Cochran et al disclose that the water activity of baked goods such as bread is in the range of about .9 -.98. Thus, the water activity claimed is common to baked products and it is expected the baked products in the prior art have similar water activity. It would also have been obvious to put perforation in the baked product as taught by Loose if it is desired to separate the product into different portions. The product disclosed by Haegens is the same type of product claimed and the water activity is expected to be the same because the water activity claimed is common to baked goods. Thus, it would have been obvious to store the product in a seal package in the refrigerator for extended storage. The storage stability will be the same as claimed because it is the same type of product.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haegens et al in view Rozzano, Snyder, Atwell, Loose, Cochran et al, The Encyclopedia of Chemical Technology, The Baking Science & Technology, and Cochran et al..

5. Haegens et al disclose a bread stick baked from a dough comprising flour, vegetable oil, lard, salt, whey-like suspension and water. The breadstick is packaged. (See columns 2-3).

Haegens et al do not disclose packaging the breadstick in a kit together with other food components, the water activity, the stick with perforation so that it can be broken into at least two

Art Unit: 1761

individual pieces, the dough recipe does not contain ingredients such as sweetener, dough relaxer, sodium stearoyl lactylate, monoglyceride and diglyceride, enzyme, spice and seasoning, gum and calcium propionate and the amounts of ingredients as claimed.

Rozzano discloses a compartmentalized food package. The package includes a container and sealed cover which have a plurality of individually sealed chambers for foodstuff. The container includes a top flange or surface which extends about the individual chambers onto which the removable cover is secured by an adhesive or heat sealing. A plurality of distinct foodstuffs may be individually sealed in the chambers thereby maintaining each food flavor, aroma and desired moisture content. (See col. 2)

Snyder discloses a cereal kit in which the different food components are sealed in individual packages and placed in a single container which is covered. ( see the abstract and figure 1)

Loose discloses a biscuit product with perforation so that it can be broken into different portions (see col. 1).

Cochran et al disclose on column 3 lines 35-40 that common baked goods such as bread, dinner rolls typically have a water activity in the range of about .9-.98.

Atwell discloses a refrigerated dough in which a dough relaxer may be added to facilitate sheeting of the dough, emulsifier is added to influence texture and homogeneity of the dough mixture to increase dough stability, to improve eating quality and to prolong palatability. Useful emulsifying agents include mono and di glyceride. Atwell also teaches shortening may be added

Art Unit: 1761

as a tenderizer, seasoning, extenders, preservatives and food colorings may be added as desired.  
(see columns 4-5)

The book " Encyclopedia of Chemical Technology" teaches mold inhibitors such as calcium propionate is commonly added to bakery foods to extend shelf life and enzymes are added to reduce mixing time of dough or to make doughs more pliable

The book " Baking Science & Technology" teaches to use dough conditioners such as sodium stearoyl lactylate in bread making . The condition acts to produce measurable increase in dough absorption, an improved mixing tolerance and machinability of the dough, an accelerated final proof, an increase in loaf volume, improvements in grain and texture, greater crust tenderness and extended keeping properties.

It would have been obvious to one skilled in the art to package the Haegens et al breadstick with other food components in the container of Rozzano to make a convenient food kit. Such convenient food kit is well known in the art and one example is shown by Snyder. It would have been obvious to package any other food components in the container depending on the taste desired. For example, it would have been obvious to package the breadstick with a sauce because breadstick is commonly consumed with a sauce. It would also have been obvious to individually seal the different components such as taught by Snyder to maintain the freshness of the different components. It would also have been obvious to use modified packaging such as flushing with inert gas or vacuum packaging to increase the shelf stability of the product. This concept is well known in the art. All the ingredients claimed and not disclosed by Haegens et al

Art Unit: 1761

are well known in the art as shown by the prior art. These ingredients are added to dough to obtain specific functions and properties. It would also have been obvious to one skilled in the art at the time of the invention to add a dough relaxer, sodium stearoyl lactylate, emulsifiers, enzyme and calcium propionate to the dough disclose by Haegens et al for their art-recognized functions as taught by the prior art. It would have been obvious to add sugar when desiring a sweet taste. It would also have been obvious to add a gum as stabilizer; this is well known in the art. It would also have been obvious to add seasoning and/or spices to the bread to enhance the flavor and taste of the product. The type of seasoning or spice depends on the flavor and taste wanted and this can vary among individuals. As to the amounts, the amounts to be used depends on the size of the product, the type of bread and the flavor, taste and texture wanted in such bread. It would have been within the skill of one in the art to determine the amounts ,taking into consideration the above factors, through routine experimentation. While Haegens et al are silent on the water activity, Cochran et al disclose that the water activity of baked goods such as bread is in the range of about .9 -.98. Thus, the water activity claimed is common to baked products and it is expected the baked products in the prior art have similar water activity. It would also have been obvious to put perforation in the baked product as taught by Loose if it is desired to separate the product into different portions.

6. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

April 6, 2003

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*